IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.14/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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Mr. Hussain, Advocate for the appellant.
Mr. S.K. Sable, Advocate for respondents.

CORAM : A.P. Lavande, J.
DATED : December 4, 2006

This appeal is directed against judgment and decree dated 10/8/2005 passed by 1st Adhoc Additional District Judge, Achalpur in Regular Civil Appeal No. 26/1994 allowing the appeal filed by the respondents-defendants against judgment and decree dated 17.2.1994 passed by Civil Judge, Jr. Dn. Daryapur in Regular civil Suit No.78/1990.

The appellant-plaintiff filed the above referred suit for possession and damages against respondents-defendants alleging that the defendants encroached on the plot of the plaintiff in the year 1989 to the extent of 56 Are. The suit was

contested by the defendants. The trial Court, upon appreciation of the evidence, decreed the suit. The lower appellate Court reversed the decree, primarily on the ground that the plot of the defendants has not been demarcated in the plaint map. Secondly, on the ground that the portion of the land which the plaintiff had sold to Kamlabai was not again shown in the plaint map. The appellate Court held that in view of these infirmities the decree passed by the trial Court could not be sustained.

Learned counsel for the appellant submitted that the appellate Court erred in reversing the decree passed by the trial Court inasmuch as the evidence led by the plaintiff clearly established the encroachment of the defendants.

Per contra, learned counsel appearing for the respondents supported the finding given by the lower appellate Court.

Having considered the submissions made by learned counsel for the parties and having perused the judgments passed by both the Courts below, I do not find any ground to interfere in second appeal. The finding given by lower appellate Court that the plaintiff has not proved encroachment on the plot of the plaintiff cannot be said to be perverse warranting interference in second appeal. No substantial question of law is involved in the appeal. The appeal is summarily rejected.

JUDGE

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